

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 6.6.2602, independent liability	)	AMENDMENT AND REPEAL
fund definitions; and the repeal of	)	
ARM 6.6.2606, independent liability	)	NO PUBLIC HEARING
fund penalties	)	CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), proposes to amend the above-stated rules.

2. The CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the CSI no later than 5:00 p.m. on January 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.2602 DEFINITIONS As used in this subchapter ~~ARM 6.6.2601 through 6.6.2606~~ and Title 33, chapter 27, MCA, the following definitions apply unless the context requires otherwise:

(1) "Health" means the extent to which ~~that~~

(a) assets in an independent liability fund are accurately valued; and

(b) really worth the amount assigned to them and that all the investments and assets contained in constituting an independent liability fund meet the criteria established by 33-2-501, and 33-2-502, and Title 33, chapter 2, part 8, MCA, and have been properly valued as investments and assets of that nature would be valued under 33-2-532, MCA. ~~"Health" does not mean that the investments and assets contained in an independent liability fund are sufficient to cover claims.~~

(2) "Inviolability" means that the business entity establishing the independent liability fund has provided security, third-party oversight, or both, in accordance with these rules so as to satisfy the commissioner that the investments and assets that comprise the independent liability fund cannot be misappropriated or dissipated ~~in violation of the requirements of the laws governing independent liability funds.~~

(3) ~~"Secure"~~ "Security" means measures taken to provide ~~that there is a~~ reasonable expectation that an independent liability fund will remain inviolable over the time period it is to remain available to pay the costs of third-party liability claims.

(4) ~~"Viable"~~ "Viability" means the extent to which ~~reasonable expectation that~~ the investments and assets ~~that make up~~ constituting an independent liability fund

will retain their value or increase in value over the time period they are to remain available to pay the costs of any third-party liability claim.

AUTH: 33-27-104, MCA  
IMP: Title 33, ch. 27, MCA

REASON: The CSI proposes to amend this rule to provide clarification and to eliminate references to now-repealed statutes. Specifically, the rule cites Title 33, chapter 2, part 8, MCA, as well as 33-2-532, MCA, all of which have been repealed. Additionally, the proposal amends definitions to more clearly inform the statutes and rules they apply to. For example, ARM 6.6.2605 uses the concepts "security" and "viability," rather than the current "secure" and "viable."

4. The CSI proposes to repeal the following rule:

6.6.2606 PENALTIES

AUTH: 33-27-104, MCA  
IMP: Title 33, ch. 27, MCA

REASON: The CSI proposes to repeal this rule because it restates applicable statutes. Specifically, it states that violations of subchapter 26 are subject to fines under 33-1-317, MCA, after a hearing under 33-1-701, MCA. This process applies to all violations of the Insurance Code and rules promulgated thereunder. Therefore, the rule is superfluous.

5. Concerned persons may submit their data, views, or arguments in writing to: Michael A. Kakuk, Attorney, Commissioner of Securities and Insurance, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m. on February 9, 2018.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael A. Kakuk at the above address no later than 5:00 p.m. on February 9, 2018.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1 person based on the number of independent liability funds currently in existence.

8. The CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may sign up by clicking on the blue button on the CSI's website at: <http://csimt.gov/laws-rules/> and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules may significantly and directly impact a small business.

/s/ Michael A. Kakuk  
Michael A. Kakuk  
Rule Reviewer

/s/ Kris Hansen  
Kris Hansen  
Chief Legal Counsel

Certified to the Secretary of State January 2, 2018.